

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

THE CATHOLIC BISHOP OF
SPOKANE, a/k/a THE CATHOLIC
DIOCESE OF SPOKANE, a
Washington corporation sole,

Plaintiff,

v.

PAINE HAMBLER, LLP, a
Washington limited liability
partnership f/k/a PAINE HAMBLER,
COFFINE, BROOKE & MILLER,
LLP; GREGORY JOHN ARPIN,
individually, and the martial
community composed of GREGORY
JON ARPIN and JANE DOE ARPIN,
SHAUN McKEE CROSS, individually
and the marital community composed
of SHAUN McKEE CROSS and JANE
DOE CROSS,

Defendants.

NO: 12-CV-0583-TOR

ORDER DISMISSING CASE FOR
LACK OF SUBJECT MATTER
JURISDICTION

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ORDER DISMISSING CASE FOR LACK OF SUBJECT MATTER
JURISDICTION ~ 1

1 BACKGROUND

2 On September 21, 2012, Plaintiff filed a lawsuit against Defendants in
3 Spokane County Superior Court alleging claims of legal malpractice/negligence,
4 and violations of the Rules of Professional Conduct, U.S.C. § 327, and Bankruptcy
5 Rule 2014. ECF No. 1-1 at 10-11. The matter was removed to this Court on
6 October 30, 2012. On February 20, 2013, the Supreme Court of the United States
7 issued its decision in *Gunn v. Minton*, 133 S. Ct. 1059 (2013). Upon review of the
8 holding in *Gunn*, the Court ordered the parties to show cause why this case should
9 not be remanded back to the Spokane County Superior Court.

10 DISCUSSION

11 After reviewing the parties' responses to the order to show cause, the Court is
12 satisfied that the Supreme Court decision in *Gunn* does not deprive the Court of
13 jurisdiction over this matter. However, as aptly identified by Defendants, the
14 Court lacks subject matter jurisdiction over Plaintiff's claims under the *Barton*
15 doctrine.

16 "It is a fundamental precept that federal courts are courts of limited
17 jurisdiction." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978)
18 (limits on federal jurisdiction "must be neither disregarded nor evaded"); *see also*
19 *U.S. v. Bravo-Diaz*, 312 F.3d 995, 997 (9th Cir. 2002)("a court of the United States
20 may not grant relief absent a constitutional or valid statutory grant of jurisdiction").

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1 Thus, it is presumed that a federal court lacks jurisdiction” unless the contrary
2 affirmatively appears.” *Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221,
3 1225 (9th Cir. 1989). A court may consider subject matter jurisdiction *sua sponte*.
4 *United Investors Life Ins. Co. v. Waddell & Reed Inc.*, 360 F.3d 960, 967 (9th Cir.
5 2004) (the district court had a duty to establish subject matter jurisdiction over the
6 removed action *sua sponte*, whether the parties raised the issue or not).

7 The *Barton* doctrine, established by the Supreme Court over a century ago,
8 provides that before suit can be brought against a court-appointed receiver, “leave
9 of the court by which he was appointed must be obtained.” *Barton v. Barbour*, 104
10 U.S. 126, 127 (1881). As applied in the Ninth Circuit, the Barton doctrine requires
11 a party to “first obtain leave of the bankruptcy court before it initiates an action in
12 another forum against a bankruptcy trustee or other officer appointed by the
13 bankruptcy court for acts done in the officer’s official capacity.”¹ *In re Crown*
14

15 ¹ The Ninth Circuit recognizes two exceptions to the *Barton* doctrine. First, *Barton*
16 does not apply if the officer engages in conduct beyond his authority. *See Leonard*
17 *v. Vrooman*, 383 F.2d 556, 560 (9th Cir. 1976). Second, a limited statutory
18 exception exists if the officer is carrying on business connected with the property.
19 *See* 29 U.S.C. § 959; *see also Crown Vantage, Inc.*, 421 F.3d at 971-72 (“[b]y its
20 terms, this limited exception applies only if the trustee or other officer is actually

1 *Vantage, Inc.*, 421 F.3d 963, 970 (9th Cir. 2005). The Court in *Barton* held that if
2 leave of the court was not obtained, the other forum lacked subject matter
3 jurisdiction over the suit. *Barton*, 104 U.S. at 127. As the Supreme Court
4 explained, allowing the unauthorized suit to proceed “would have been a
5 usurpation of the powers and duties which belonged exclusively to another court.”
6 *Id.* at 136 (reasoning that the court appointing the receiver has *in rem* subject
7 matter jurisdiction over the receivership property).

8 Defendants contend that this Court lacks subject matter jurisdiction, and must
9 dismiss the case, because Plaintiff did not obtain leave from the bankruptcy court
10 to bring this action as required under *Barton*. ECF No. 10 at 19. Plaintiff does not
11 attempt to persuade the Court as to whether *Barton* doctrine controls in this matter.
12 Rather, it “take[s] the position” that assuming *Barton* applies, “this Court’s initial
13 grant of jurisdiction over the matter, coupled with its judicial imprimatur in
14 remanding the matter to the Spokane County Superior Court would act as
15 compliance with the *Barton* Doctrine.” ECF No. 11 at 4. However, Plaintiff’s
16 reasoning is erroneous under the tenants of *Barton* as applied by the Ninth Circuit.
17 Absent leave from the bankruptcy court, both state and federal district courts lack
18 subject matter jurisdiction over this matter. *See Crown Vantage, Inc.*, 421 F.3d
19 _____
operating the business.”). However, neither party raises these exceptions, and the
20 Court finds they are not applicable here.

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1 963, 970 (9th Cir. 2005); *see also In re Kashani*, 190 B.R. 875, 885 (B.A.P. 9th
2 Cir. 1995)(leave to sue is required in state and federal courts, other than the
3 bankruptcy court that actually approves the appointment).

4 The Court finds that *Barton* is applicable to this matter. The allegations in
5 Plaintiff's Complaint arise directly from, and are based entirely on, Defendants'
6 conduct as counsel for Plaintiff debtor in the underlying Chapter 11 proceeding.
7 "It is well-settled that [a debtor's attorney] cannot be sued in state court without
8 leave of the bankruptcy court for acts done in his official capacity and within his
9 authority as an officer of the court." *In re Balboa Improvements, Ltd.*, 99 B.R.
10 966, 970 (Bankr. 9th Cir. 1989); *In re Jasmine Networks, Inc.*, No. 02-54815-MM,
11 2006 WL 3392062, at *2 (Bankr. N.D. Cal. 2006)(unreported)(*Barton* doctrine
12 "extends beyond trustees to other persons appointed by the bankruptcy court, like
13 debtors-in-possession and their court-approved counsel."); *Blixseth v. Brown*, 470
14 B.R. 562, 567 (D. Mont. 2012)(*Barton* doctrine applies to both "court-appointed"
15 and "court-approved" officers). The retention of the Defendants as counsel for the
16 Plaintiff was approved by the bankruptcy court. *See* ECF No. 1-1 at 6-7; *see also*
17 11 U.S.C. §§ 327, 1107 (attorneys who represent Chapter 11 debtors, as well as all
18 fees paid to those attorneys, must be approved by the bankruptcy court).

19 It is undisputed that Plaintiff did not obtain leave of the bankruptcy court
20 before initiating the instant action against Defendants for acts done in their official

1 capacity. *See Crown Vintage, Inc.*, 421 F.3d at 970. Thus, under the dictates of
2 the *Barton* doctrine, this Court lacks subject matter jurisdiction over the claims in
3 this suit.

4 **ACCORDINGLY, IT IS ORDERED:**

5 All claims and causes of action in this matter are **DISMISSED** without
6 prejudice for lack of subject matter jurisdiction.

7 The District Court Executive is directed to enter this Order, provide copies
8 to counsel, and **CLOSE** the file.

9 **DATED** May 15, 2013.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge